IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 735 OF 2007

Babubhai Damji Patel ...Petitioner
V/s.
The Municipal Corporation of
Greater Mumbai ...Respondents

Mr.A.Y. Sakhare with Mr.J.J. Shah for the Petitioner.
Mr.N.A. Shaikh for Respondents-BMC.

CORAM : V.M. KANADE, J.

DATED : APRIL 17, 2007

P.C. :-

1. Heard the learned Counsel for the petitioner and the learned Counsel for the Corporation.

2. The petitioner is challenging the order passed by the Competent Authority of the Municipal Corporation dated 16.8.2006 whereby his application for regularisation of the temporary structure covering the front open space of shop has been rejected. The petitioner was served with the Show Cause Notice which was issued under Section 351 of the Corporation Act. The petitioner filed the suit and challenged the said Show Cause Notice. The said suit was disposed of by giving a direction to the petitioner to make an

application for regularisation through his licence Architect. The Competent Authority was directed to accept the proposal and decide the same in accordance with law. A further direction was given to the Corporation to communicate the reasoned order to the plaintiff. Liberty was also granted to the petitioner to challenge any adverse order if passed by the Competent Authority under Section 47 of the MRTP Act.

3. It is the case of the petitioner that the reasoned order was served on his Architect and he was not informed about the said reasoned order and therefore, he could not prefer appeal as provided under Section 47 since limitation for the purpose of filing the appeal was 40 days and that the said period had already expired and therefore, the petitioner has approached this court under Article 226 of the Constitution of India.

4. The learned Counsel for the Corporation, on the other hand, has invited my attention to the impugned order. He submitted that the impugned order clearly

indicates that the copy of the said order was sent to the petitioner. It is submitted that therefore, the contention of the learned Counsel for the petitioner that he was not served, is not correct. It is submitted that the petitioner ought to have preferred an appeal under Section 47 and on that ground also, in view of the alternate remedy being available to the petitioner, the present petition is not maintainable.

5. In my view, it is no doubt true that the copy of the impugned order has been endorsed in favour of the petitioner. However, the fact remains that the copy has been addressed to the Architect of the petitioner. In my view, benefit of doubt will have to be given to the petitioner that the copy of the impugned order has not been served on him.

6. The petitioner, therefore, may file an appeal against the impugned order within a period of three weeks from today. The Appellate Authority shall decide the appeal on merits, as expeditiously as possible and in any case, within a period of four months.

7. Writ Petition is disposed of with the above directions.

8. The petitioner may make an application for stay of the impugned order before the Appellate Authority. In the meantime, the Corporation shall not take any steps for demolishing the structure for a period of three weeks.

9. The petitioner to take steps to get the petition numbered. If objections are not removed within the period of four weeks, this order shall stand vacated without further reference to this Court.

(V.M. Kanade, J.)